

REMARKS

In the Final Office Action mailed September 12, 2007, claims 1-31 were pending and stand finally rejected. Reconsideration of the present application and withdrawal of the final rejection of claims 1-31 is respectfully requested.

Claims 1-16 and 18-31 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,193,721 to Michelson. The examiner asserts that pilot hole guide 60 is the auxiliary element, and that compression post 54/insertion tool 90 is the holding element. The disclosure of these features in Michelson is discussed in applicant's June 11, 2007 response. In summary, the June 11, 2007, response set forth facts that demonstrated there is no disclosure in Michelson that compression post 54 and/or insertion tool 90 are engageable to or positionable through pilot hole guide 60 or that compression post 54 and/or insertion tool 90 includes a proximal portion engaging pilot hole guide 60 that is operable to rotate pilot hole guide 60 relative to the plate with shaft 56 engaged to the vertebra. There also is no disclosure that compression tool 100 is engaged or engageable to pilot hole guide 60 or insertion tool 90.

In responding to the June 11, 2007, arguments, the examiner asserts that "the prior art of reference still reads on the claims." Specifically, the examiner asserts that the pilot hole guide 60 (the auxiliary device) "may be considered 'mounted thereto' when the system is configured for insert. The distal end of the device extends through a cannulation in the auxiliary device when it is used with the stabilization device." A review of Michelson does not find any disclosure that compression post 54 and/or insertion tool 90 are engageable to or positionable through pilot hole guide 60 or that compression post 54 and/or insertion tool 90 includes a proximal portion engaging pilot hole guide 60 that is operable to rotate pilot hole guide 60 relative to the plate with shaft 56 engaged to the vertebra. In fact, pilot hole guide 60 includes central shaft 64 extending through housing 62 so that it is not possible to position compression post 54 and/or insertion tool 90 through housing 62 of pilot hole guide 60. It is respectfully requested that where or how the examiner considers Michelson to disclose the "distal end of the device extends through a cannulation in the auxiliary device when it is used with the stabilization device" be clarified since applicants cannot find any disclosure in Michelson of any operative engagement between compression post 54/insertion tool 90 and the pilot hole guide 60. If the facts are based

on the personal knowledge of the examiner rather than in the reference, then an affidavit attesting to the same is respectfully requested so the same may be considered and rebutted if proper.

The examiner further asserts that "the proximal portion of the holding element, attached, is capable of being 'operable to rotate' the auxiliary element in a manner at least considered relative to the said stabilization device at a distal portion." It is not clear how it can be considered that compression post 54/insertion tool 90 is capable of being operable to rotate pilot hole guide 60. Pilot hole guide 60 includes a housing 62 with a spring loaded central shaft 64 extending therethrough and a proximal head 68. The spring loaded shaft 64 is engaged and captured in housing 62 to a normally biased retracted position. See col. 23, lines 18-39. It is not apparent nor is it disclosed in Michelson how either compression post 54 or insertion tool 90 could even be capable of being operable to rotate pilot hole guide 60. Even further, claim 1 recites "wherein said holding element is operable to rotate said auxiliary element relative to said stabilization device with said distal portion of said holding element engaged to the spinal column." The examiner does not indicate nor does Michelson disclose that either compression post 54 or insertion tool 90, when engaged to the spinal column, is even capable of being operable to rotate pilot hole guide 60.

For at least these reasons, it is respectfully submitted that a prima facie case for rejecting claim 1 as anticipated by Michelson is not established in the final office action or the examiner's response to applicant's arguments filed June 11, 2007. Withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2-16 and 18-19 depend directly or indirectly from claim 1 and are allowable at least for the reasons claim 1 is allowable and for the reasons provided in the June 11, 2007 response. The traversal of the rejection of claims 9, 10, 11, 16 and 19 has not been acknowledged or rebutted, and withdrawal of the rejection of claims depending from claim 1 is respectfully requested.

Claim 20 recites "a stabilization device positionable along a spinal column and including an auxiliary element associated therewith and movable relative thereto, said auxiliary element including a cannulation extending at least partially therethrough; and a holding element including a distal portion positionable in said cannulation of said auxiliary element, a proximal portion extending proximally from said distal portion, and an intermediate portion therebetween, wherein said

intermediate portion includes a distally oriented engagement surface adapted to engage said auxiliary element, said holding element movable to position said auxiliary element in a desired position relative to said stabilization device.” The Office Action asserts that pilot hole guide 60 is an auxiliary element and that compression post 54/insertion tool 90 are the holding element. As discussed above, there is no disclosure that shaft 56 or any other portion of compression post 54/insertion tool 90 includes a distal portion positionable in any cannulation of pilot hole guide 60. Furthermore, pilot hole guide 60 does not include a cannulation that is not occupied by spring-loaded shaft 64. Nor is there any disclosure that compression post 54/insertion tool 90 includes any distally oriented engagement surface that is adapted to engage pilot hole guide 60 or that compression post 54/insertion tool 90 is movable to position pilot hole guide 60 in a desired position relative to bone plate 2. Accordingly, a prima facie case for rejecting claim 20 as anticipated by Michelson has not been established, and withdrawal of this basis of the rejection of claim 20 is respectfully requested.

Claims 21-26 depend from claim 20 and are allowable at least for the reasons claim 20 is allowable and for other reasons provided in the June 11, 2007 response. The traversal of the rejection of claims 23 and 26 has not been acknowledged or rebutted, and withdrawal of the rejection of claims depending from claim 20 is respectfully requested.

Claim 27 recites “a holding element including a distal portion positionable in a cannulation of the stabilization system, a proximal portion extending proximally from said distal portion, and an intermediate portion therebetween, wherein said proximal portion of said holding element includes a first instrument engaging portion adapted to receive a rotational force delivered to said holding element and a second instrument engaging portion spaced from said first instrument engaging portion adapted to receive an axial force delivered to said holding element.” The rejection of this claim was traversed in the previous response. The Final Office Action does not indicate how Michelson is considered to disclose claim 27, nor has any response to the traversal of the rejection of this claim over Michelson been made. Accordingly, withdrawal of this basis of the rejection of claim 27 is respectfully requested.

Claim 28-31 depend from claim 27 and are allowable at least for the reasons claim 27 is allowable and for the reasons provided in the June 11, 2007 response. The traversal of the rejection

of claims 28, 30 and 31 has not been acknowledged or rebutted, and withdrawal of the rejection of claims depending from claim 27 is respectfully requested.

Claim 17 stands rejected as being unpatentable under 35 USC §103(a) over Michelson in view of U.S. Patent Application Publication No. 2003/0083749 to Kuslich et al. Claim 17 depends from claim 1 and is allowable at least for the reasons claim 1 is allowable. Accordingly, withdrawal of the rejection of claim 17 is respectfully requested.

The present application including claims 1-31 is in condition for allowance, and a Notice of Allowance is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted,

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